LAW SUMMARY
STATUTE OF LIMITATIONS – CLAIM FOR REFUND OR CREDIT

The law provides a final deadline for filing refund claims, including tax returns that claim refunds. This time limit is known as the statute of limitations.

The general time limit for a taxpayer to file a claim for credit or refund of California state income and franchise taxes is provided by section 19306 of the Revenue and Taxation Code.

Section 19306 states that no credit or refund shall be allowed after four years from the original due date of the return, four years from the date the return was filed (if filed within the extension period), or one year from the date of the overpayment, whichever is later, unless before the expiration of that period a claim is filed by the taxpayer.

1. Statute of Limitations Cannot Be Waived for Reasonable Cause

If the taxpayer fails to file a claim for refund/credit before the final deadline, by the clear language of the law, the claim cannot be allowed.

The law does not provide for the waiver of the statutory period based on reasonable cause. A taxpayer's failure to file a claim for refund/credit within the statutory period prevents the taxpayer from doing so at a later date. (*Appeal of Richard M. and Claire P. Hammerman*, 83-SBE-260, December 13, 1983.)

With the exception of the situation described in section 6 below, unfortunate circumstances, such as illness or personal problems, will not toll the statute of limitations for filing a claim for refund/credit. (*Appeal of Harry O. Nylen*, 82-SBE-225, September 21, 1982.) Refunds can be granted to any taxpayer only to the extent permitted by the statute of limitations. (*Appeal of Robert A. and Nancy R. Jacobs*, 65-SBE-029, August 3, 1965.)

2. Taxpayer's Responsibility

Even if the taxpayer is unaware of the statute of limitations, ignorance of the law does not excuse a taxpayer's failure to file a timely claim for refund/ credit. (*Appeal of Escondido Chamber of Commerce*, 73-SBE-049, September 17, 1973; *Appeal of J. B. Ferguson*, 58-SBE-024, September 15, 1958.)

In addition, it is not the Franchise Tax Board's (FTB) responsibility to inform a taxpayer of the time within which a claim must be filed. (*Appeal of Earl and Marion Matthiessen*, 85-SBE-077, July 30, 1985.) There is no duty on the part of FTB to discover a taxpayer's overpayment or to notify the taxpayer of such overpayment. (*Appeal of Manuel and Ofelia C. Cervantes*, 74-SBE-029, August 1, 1974.)

3. Computing the Four-year Deadline/Paperless Extensions

The law generally requires that a claim for refund/credit must be filed four years from the <u>due date</u> of the tax return or four years from the <u>actual filing date</u> of a return filed on or before the extended due date. The law does not provide that this deadline can be computed from the date a late return or an amended return was filed.

For personal income taxpayers, the original due date of an income tax return is April 15 of the year following the tax year for which a refund is claimed. For example, the original due date of a return for the 1992 tax year was April 15, 1993. The statute of limitations for this tax year would therefore expire on April 15, 1997.

Depending on the tax year involved, the deadline may be computed from the tax return's April 15 due date, or from the date the return was actually filed, if timely filed by the extended due date, as follows:

The process of automatic "paperless" extensions began in the 1991 tax year and remains in effect. Under this process, the taxpayer is no longer required to request an extension on a paper form. If the taxpayer files a return before October 15, an extension is automatically granted. If the taxpayer fails to file a return by October 15, no extension exists. Under the paperless extension process, the return is timely if it is filed on or before October 15.

Generally, for tax years before 1995, whether or not the taxpayer received an automatic paperless extension does not affect the final deadline. That is, the taxpayer had to file a claim for refund/credit within four years from April 15, the original due date of the return.

For 1995 and later tax years, if the taxpayer filed a return on or before April 15, a claim for refund/credit must be filed within 4 years from April 15. If the taxpayer timely filed a return on or before the extended due date, a claim for refund/credit must be filed within 4 years from the date the return was actually filed.

4. The One-Year Statute of Limitations

If the four-year statute of limitations is no longer applicable, a taxpayer may still receive a refund of payments made within one year of the claim. The deadline for the one-year statute of limitations is based on the date of the taxpayer's payments. Payments from withholding, estimated tax and refundable credits are effective as of the original due date of the return. (Revenue and Taxation Code section 19002; *Commissioner v. Lundy* (1996) 516 U.S. 235, 133 L.Ed.2d 611.)

Payments made by a taxpayer received through FTB's collection efforts are effective the date the payments are received. Payments that are transferred from another tax year are effective as of the date the payments are transferred. (Revenue and Taxation Code section 19383, *United States v. Swift & Co.* (1931) 282 U.S. 468, 476.)

The respective tax year's liability must first be fully paid before a refund or credit of a payment that overpaid that liability can be claimed. With the exception of the informal refund claim procedure provided by Revenue and Taxation Code section 19322.1 described in section 5, a refund or credit can be allowed for only those overpayments that were received or were effective within one year of the date the taxpayer's claim was filed with FTB. (*Appeal of W.J. Sasser*, 63-SBE-126, November 5, 1963; *Masi v. Nagle* (1992) 5 Cal.App.4th 608, 613-615, 7 Cal.Rptr.2d 423.)

5. Informal Refund Claims

The law provides that a claim for refund of tax that is otherwise valid, but is made before full payment of the tax has been made, shall be an "informal" refund claim, sufficient to toll (delay the expiration of) the statute of limitations. The informal claim will be "perfected" and deemed filed on the date that full payment of tax is made, for purposes of the administrative claims process. (Revenue and Taxation Code section 19322.1.) However, no credit or refund may be made or allowed for any payment made more than seven years before the date of full payment of tax for the year.

This provision applies to refund claims filed on or after January 1, 2002.

6. Financial Disability Due to Medically Determinable Physical or Mental Impairment

For individual taxpayers, the running of the statute of limitations for filing a refund claim will be suspended during any period that the individual is determined to be "financially disabled." A taxpayer will meet this provision if the individual is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment, that is either deemed to be a terminal impairment or is expected to last for a continuous period of not less than 12 months. (Revenue and Taxation Code section 19316.) An individual taxpayer will not meet this provision if for any period, the individual's spouse or any other person is legally authorized to act on that individual's behalf in financial matters. (Section 19316.) The burden of proof is on the taxpayer to show that he or she was financially disabled.

This provision is effective for those refund claims where the statute of limitations has not expired by September 23, 2002.

7. Equitable Tolling

With the limited exceptions in Revenue and Taxation Code sections 19322.1 and 19316 (see sections 5 and 6 above), the law provides that the statute of limitations is mandatory, and there is no tolling of the statute of limitations. (*United States v. Brockamp* (1997) 117 S.Ct.849, 136 L.Ed.2d 818.)

8. Previously-filed or Timely Claim for Refund/Credit - Taxpayer's Burden of Proof

It is the taxpayer's responsibility to show that a claim for refund/credit was timely filed. (*Appeal of Thomas T. Crittenden*, 74-SBE-043, October 7, 1974.) The fact that the claim may have been prepared prior to the expiration of the statute of limitations does not, in itself, prove the timely filing of a claim for refund/credit. (*Appeal of La Salle Hotel Co.*, 66-SBE-071, November 23, 1966.) If there is no convincing evidence that the return/refund claim was actually mailed on or before the expiration of the statute of limitations, a taxpayer's unsupported allegations do not overcome FTB's official government records indicating that the claim for refund/credit was not timely filed. (*Appeal of La Salle Hotel Co.*, 66-SBE-071, November 23, 1966; *Appeal of Richard L. and Mary D. Marks*, 76-SBE-057, May 4, 1976.)

Even if the taxpayer places the claim for refund/credit in a United States mailbox before the statutory deadline, the taxpayer must offer compelling proof, such as a registered or certified mail receipt, that the claim was timely mailed. (See Government Code section 11003; Internal Revenue Code section 7502; Treas. Reg. section 301.7502-1(c)(1)(iii)(A).) If the taxpayer chooses to have the claim for refund/credit delivered by ordinary mail by placing it in a U.S. mailbox and not via certified or registered mail, the taxpayer assumes the risk that the claim will not be postmarked or received by the FTB before the expiration of the statute of limitations.

It is the taxpayer's burden to prove entitlement to the refund/credit. (*Appeal of Oscar D. and Agatha E. Seltzer*, 80-SBE-154, November 18, 1980.) Unsupported assertions do not meet that burden. (*Appeal of Royce E. Gum*, 82-SBE-064, March 31, 1982; *Appeal of Michael and Helena Meshekoff, et al.*, 65-SBE-004, February 3, 1965.)

9. Difficulties in Obtaining Records or W-2 Forms

If a taxpayer files a claim for refund/credit after the expiration of the statute of limitations because of difficulties in obtaining tax records, that refund/credit cannot be allowed. (*Appeal of Wendell Jenkins, Sr.*, 81-SBE-069, June 23, 1981.)

Even if the taxpayer has difficulties obtaining W-2 forms, the failure of an employer to provide the taxpayer with W-2 forms does not excuse the taxpayer from the late filing of a refund claim. (*Appeal of Paul R. Brown*, 84-SBE-018, January 31, 1984.)

10. Overpayment of Tax

In addition to proving that the claim was filed before the expiration of the statute of limitations, the taxpayer must prove entitlement to the refund or credit. In other words, there must be an overpayment of tax for which a refund can be granted. The United States Supreme Court defined an overpayment as the "excess of that properly due." (*Jones v. Liberty Glass Company* (1947) 332 U.S. 524, 532.) A claimed overpayment of income tax may not be refunded where a correct computation shows the amount paid does not exceed the amount of tax, which might have been properly assessed and demanded. (*Lewis v. Reynolds* (1932) 284 U.S. 281, 283; Rev. Rul. 81-87, 1981-1 C.B. 580.)

The date of an overpayment is the date of payment of the first amount that is in excess of the tax liability and the dates of payments of all amounts subsequently paid with respect to such tax liability. (Treas. Reg. section 301-6611-1(b).)

11. Timely Overpayment Credited to Another Tax Year

Section 19301 of the Revenue and Taxation Code states that if FTB finds that there has been an overpayment of tax for any year for any reason, the amount of the overpayment may be credited against any amount due from the taxpayer. (*Appeal of Omer W. Ross, Deceased*, 86-SBE-120, June 10, 1986.) If a taxpayer files a timely claim for refund or credit before the expiration of the applicable statute of limitations, and the claimed overpayment is allowed, FTB will credit the overpayment to any other tax year's balance due before issuing a refund.

The credit then is treated as a payment on the account for the year with the balance due, effective on the date of transfer, and may be recovered only if a valid refund claim is filed for that year. (*Donahue v. United States* (1995) 33 Fed. Cl. 600, 609. Also, see section 4 above.)

12. Sufficiency of Claim

Section 19322 of the Revenue and Taxation Code requires that every claim for refund must be in writing, must be signed by the taxpayer or the taxpayer's authorized representative, and must state the specific grounds upon which it is based. The claim must set forth in detail each ground upon which a refund or credit is claimed and provide sufficient facts to apprise FTB of the exact basis thereof (18 Cal. Code Regs. section 19055(a)). A document that does not meet these requirements is not a valid claim. (*Shiseido Cosmetics (America) Ltd. v. Franchise Tax Board* (1991) 235 Cal.App. 3d 478.)

13. Inability to Pay is Not an Exception to the Statute of Limitations

A taxpayer's financial problems due to inability to pay the amount owed does not justify the granting of an untimely claim. (Appeal *of Manuel and Ofelia Cervantes*, 74-SBE-029, August 1, 1974.)